IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX

Versus

VRAJLAL M. SONI [HUF]

Appearance:

1. GIFT TAX REFERENCE No. 3 of 1989
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in

respect of the assessment year 1971-72 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that although there was transfer of interest in the goodwill by the erstwhile partners to the new partners by way of reduction of their share, that transfer was for consideration and did not involve any element exigible to Gift-tax ?"

2. The respondent assessee is a partnership firm. There were three partners in the assessee firm each one having equal share. During the accounting period, there was a change in the constitution of the firm whereby two new partners were taken. The share of each of the three continuing partners was reduced from one-third to 22 per cent while the shares of the two new partners was 17 per cent each. The Gift-tax Officer regarded the reduction in the share of the continuing partners as a gift in favour of the new partners on the ground that the right to share in the profit was a valuable right which was gifted. The Gift-tax Officer also gave a finding that there was no reason given in the partnership deed itself for the change in the profit sharing ratios. The Appellate Assistant Commissioner allowed the assessee's appeal and held that there was no gift. The Tribunal confirmed the decision of the Appellate Assistant Commissioner. Hence, this reference at the instance of the revenue.

3. We have heard Mrs Mona Bhatt, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

4. Having heard the learned counsel for the revenue and having perused the decisions of the Apex Court in Commissioner of Gift-tax vs. Chhotalal Mohanlal, (1987) 166 ITR 124 and Commissioner of Gift-tax vs. T.M. Louiz, (2000) 245 ITR 831 and the decision of this Court in Commissioner of Gift-tax vs. Punjabhai Kalabhai, (2000) 243 ITR 223, we are of the view that in the facts and circumstances of this case, as mentioned in the statement of case drawn by the Tribunal, the Tribunal was right in holding that there was no gift in this case because the transaction in question was not without consideration - when the new partners were working partners, had introduced capital and were also liable to share the losses. The facts in the instant case are, therefore, not at all akin to the facts in the case of Chhotalal Mohanlal (Supra). In that case, the father had reduced the share in the profits of the firm and the

proportionate increase in the share of profits was given to the minor sons of the continuing partner, who had not contributed any capital. In the instant case, as already indicated above, the new partners were working partners, had introduced capital and were also liable to share the losses, unlike the minor partners in the case of Chhotalal Mohanlal who were merely admitted to the benefits of the partnership as being minors, they were not to share losses. The aforesaid decisions of the Apex Court have also been recently explained by this Court in Gift-tax Reference No. 2 of 1987 decided on 25.9.2001.

5. In view of the above discussion, our answer to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-